IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. MARK DONISI, Defendant.	No. CR 06-3055-MWB **INSTRUCTIONS TO THE JURY**

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INSTRUCTION NO. 1 - INTRODUCTION

Members of the jury, I am giving you these Instructions to help you better understand the trial and your role in it and to instruct you on the law that you must apply in this case. Consider these instructions, together with all written and oral instructions given to you during or at the end of the trial, and apply them as a whole to the facts of the case. In considering these instructions, the order in which they are given is not important.

As I explained during jury selection, in an Indictment, a Grand Jury charges the defendant with seven separate offenses, as follows: **Count 1** charges the defendant with a "manufacturing marijuana" offense; **Count 2** charges the defendant with "a marijuana conspiracy" offense; **Counts 3, 4, and 5** charge the defendant with "possession with intent to distribute" offenses involving various controlled substances; **Count 6** charges the defendant with an "unlawful drug user in possession of a firearm" offense; and **Count 7** charges the defendant with "a money-laundering conspiracy" offense. As I also explained during jury selection, an Indictment is simply an accusation. It is not evidence of anything. The defendant has pled not guilty to the crimes charged against him, and he is presumed to be innocent of each such offense unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

Your duty is to decide from the evidence whether the defendant is not guilty or guilty of the charges against him. You will find the facts from the evidence.

You are the sole judges of the facts, but you must follow the law as stated in these instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, based solely on the evidence, your common sense, and the law as stated in these instructions. Do not take anything that I have done during jury selection or that Judge Bennett may say or do during the trial as indicating what he or I think of the evidence or what he or I think your verdict should be. Similarly, do not conclude from any ruling or other comment that I have made or that Judge Bennett may make that we have any opinions on how you should decide the case.

Please remember that only defendant Mark Donisi, not anyone else, is on trial here. Also, remember that this defendant is on trial *only* for the offenses charged against him in the Indictment, not for anything else.

The defendant is entitled to have each charge against him considered separately based solely on the evidence that applies to that charge. *Therefore, you must return a separate, unanimous verdict on each charge against the defendant.*

INSTRUCTION NO. 2 - PRELIMINARY MATTERS

Before I turn to specific instructions on the offenses charged in this case, I must explain some preliminary matters.

"Elements"

Each offense charged in this case consists of "elements," which the prosecution must prove beyond a reasonable doubt against the defendant in order to convict the defendant of that offense. I will summarize in the following instructions the elements of the offenses with which the defendant is charged.

Timing

The Indictment alleges that the offenses charged were committed "between about" two dates or "on or about" a certain date. The prosecution does not have to prove with certainty the exact date of an offense charged. It is sufficient if the evidence establishes that an offense occurred within a reasonable time of the date or time period alleged for that offense in the Indictment.

Controlled substances

In these instructions, when I refer to a "controlled substance," I mean any drug or narcotic that is regulated by federal law. Marijuana, nandrolone, stanozolol, and oxycodone, which were allegedly involved in the offenses charged in this case, are all "controlled substances." "Marijuana" includes all parts of the plant, whether growing or not, seeds, and any material extracted from the marijuana plant. "Nandrolone" and "stanozolol" are anabolic steroids. "Oxycodone" is a

narcotic similar to morphine that is properly used, only by prescription, for the management of pain.

"Intent" and "Knowledge"

The elements of the charged offenses may require proof of what a defendant "intended" or "knew." Where what a defendant "intended" or "knew" is an element of an offense, that defendant's "intent" or "knowledge" must be proved beyond a reasonable doubt. "Intent" and "knowledge" are mental states. It is seldom, if ever, possible to determine directly the operations of the human mind. Nevertheless, "intent" and "knowledge" may be proved like anything else, from reasonable inferences and deductions drawn from the facts proved by the evidence.

An act was done "knowingly" if the defendant in question was aware of the act and did not act through ignorance, mistake, or accident. The prosecution is not required to prove that the defendant in question knew that his acts or omissions were unlawful. An act was done "intentionally" if the defendant in question did the act voluntarily, without coercion, and not because of ignorance, mistake, accident, or inadvertence.

"Possession," "Distribution," "Delivery," and "Manufacture"

The offenses charged in this case allegedly involved "possession," "distribution," "delivery," or "manufacture" of controlled substances. "Distribution," in turn, involves "delivery" or transfer of "possession." The following definitions of "possession," "distribution," "delivery," and "manufacture" apply in these instructions:

The law recognizes several kinds of "possession." A person who knowingly had direct physical control over an item, at a given time, was then in "actual possession" of it. A person who, although not in actual possession, had both the power and the intention at a given time to exercise control over an item, either directly or through another person or persons, was then in "constructive possession" of it. If one person alone had actual or constructive possession of an item, possession was "sole." If two or more persons shared actual or constructive possession of an item, possession was "joint." Whenever the word "possession" is used in these instructions, it includes "actual" as well as "constructive" possession and also "sole" as well as "joint" possession.

The term "distribute" means to deliver a controlled substance to the actual or constructive possession of another person. The term "deliver" means the actual, constructive, or attempted transfer of a controlled substance to the actual or constructive possession of another person. It is not necessary that money or anything of value changed hands for you to find that there was a "distribution" or "possession with intent to distribute" of a controlled substance or a conspiracy to do those things. The law prohibits "distribution," "possession with intent to distribute," and "conspiring to distribute or to possess with intent to distribute" a controlled substance; the prosecution does not have to prove that there was or was intended to be a "sale" of a controlled substance to prove a "distribution," "possession with intent to distribute," or a "conspiracy" to distribute or to possess with intent to distribute.

Finally, "manufacturing marijuana" means the production, preparation, propagation, or processing of marijuana.

* * *

I will now give you more specific instructions about the offenses charged in the Indictment.

INSTRUCTION NO. 3 - COUNT 1: MANUFACTURING MARIJUANA

Count 1 of the Indictment charges that, from at least May 8, 2004, and continuing through at least August 2, 2006, defendant Donisi knowingly and unlawfully manufactured and attempted to manufacture 100 or more plants of marijuana. This offense alleges alternate theories of proof: that the defendant *actually committed* the offense and that he *attempted to commit* the offense. The prosecution does not have to prove the defendant's guilt on this offense under both alternatives; rather, the prosecution only has to prove the defendant's guilt under one of these alternatives. The defendant denies that he committed this "manufacturing marijuana" offense under either alternative.

Actual commission alternative

For you to find the defendant guilty of the "manufacturing marijuana" offense charged in **Count 1** under the "actual commission" alternative, the prosecution must prove *both* of the following essential elements beyond a reasonable doubt:

***One*, from at least May 8, 2004, and continuing through at least August 2, 2006, the defendant manufactured marijuana.**

"Manufacturing marijuana" was explained for you in Instruction No. 2 on page 6.

***Two*, the defendant knew that he was, or intended to be, manufacturing a controlled substance.**

> The defendant need not have known what the controlled substance was, if the defendant knew that he was manufacturing some controlled substance.
>
> Intent to manufacture a controlled substance can be inferred from evidence that the defendant possessed or purchased equipment necessary to manufacture that controlled substance; and/or possessed, had knowledge of, asked questions of others about, or had learned from others how to manufacture that controlled substance. No single piece of evidence necessarily establishes intent to manufacture a controlled substance; rather, the totality of the circumstances must corroborate the defendant's intent to manufacture a controlled substance sufficiently for you to find such intent beyond a reasonable doubt.

If the prosecution fails to prove these elements beyond a reasonable doubt, then you must find the defendant not guilty of the "manufacturing marijuana" offense under the "actual commission" alternative.

Attempt alternative

A defendant may be found guilty of manufacturing marijuana, even if he only attempted, but did not succeed, in manufacturing that controlled substance. For you to find the defendant guilty of manufacturing marijuana under this "attempt" alternative, the prosecution must prove *all* of the following essential elements beyond a reasonable doubt:

***One*, the defendant intended to manufacture a controlled substance or knew that what he was attempting to manufacture was a controlled substance.**

> Again, "manufacturing marijuana" was explained for you in Instruction No. 2 on page 6
>
> The defendant need not have known what the controlled substance was, if the defendant knew that what he was attempting to manufacturing was some controlled substance.
>
> Intent to manufacture a controlled substance can be inferred from evidence that the defendant possessed or purchased equipment necessary to manufacture that controlled substance; and/or possessed, had knowledge of, asked questions of others about, or had learned from others how to manufacture that controlled substance. No single piece of evidence necessarily establishes intent to manufacture a controlled substance; rather, the totality of the circumstances must corroborate the defendant's intent to manufacture a controlled substance sufficiently for you to find such intent beyond a reasonable doubt.

***Two*, between about May 8, 2004, and August 2, 2006, the defendant voluntarily and intentionally carried out some act that was a substantial step toward manufacturing marijuana.**

> "A substantial step" must be something more than mere preparation, yet may be less than the last act necessary before the actual commission of the crime of manufacturing marijuana. In order for behavior to be punishable as an attempt, it need not be incompatible with innocence, yet it must be necessary to the consummation or completion of the crime and be of such a nature that a reasonable observer, viewing it in context, could conclude beyond a reasonable doubt that it was undertaken in

> accordance with a design to manufacture a controlled substance. Crimes such as attempt to manufacture marijuana require a defendant to engage in numerous preliminary steps that brand the enterprise as criminal.

If the prosecution fails to prove these elements beyond a reasonable doubt, then you must find that defendant not guilty of the "manufacturing marijuana" offense under the "attempt" alternative.

Quantity of marijuana

If you find a defendant guilty of this "manufacturing marijuana" offense, under either alternative, then you must also determine beyond a reasonable doubt the quantity of any marijuana actually involved in the offense for which the defendant can be held responsible, as explained in Instruction No. 5.

INSTRUCTION NO. 4 - COUNT 2:
MARIJUANA CONSPIRACY

Count 2 of the Indictment charges that, between about 2001 and August 2, 2006, defendant Donisi knowingly and unlawfully conspired with other persons, whose names are known and unknown to the Grand Jury, to commit the following four offenses or "objectives": (1) to manufacture 100 or more marijuana plants; (2) to manufacture 100 kilograms or more of marijuana; (3) to distribute 100 kilograms or more of marijuana; and (4) to possess with intent to distribute 100 kilograms or more of marijuana. The defendant denies that his committed this "marijuana conspiracy" offense.

For you to find the defendant guilty of this "marijuana conspiracy" offense, the prosecution must prove beyond a reasonable doubt *all* of the following essential elements against him:

***One*, between about 2001 and August 2, 2006, two or more persons reached an agreement or came to an understanding to commit one or more of the offenses identified as objectives of the conspiracy.**

> The prosecution must prove that the defendant reached an agreement or understanding with at least one other person. The other person or persons do not have to be defendants, or named in the Indictment, or otherwise charged with a crime. There is no requirement that any other conspirators be named as long as you find beyond a reasonable doubt that there was at least one other co-conspirator besides the defendant.

The "agreement or understanding" need not have been an express or formal agreement, or have been in writing, or have covered all the details of how it was to be carried out. Also, the members need not have directly stated between themselves the details or purpose of the scheme. In determining whether the alleged agreement existed, you may consider the actions and statements of all of the alleged participants, whether they are charged as defendants or not. The agreement may be inferred from all of the circumstances and the conduct of the alleged participants.

This count of the Indictment charges that the conspirators agreed to commit one or more of the following offenses or "objectives": (1) to manufacture 100 or more marijuana plants; (2) to manufacture 100 kilograms or more of marijuana; (3) to distribute 100 kilograms or more of marijuana; and (4) to possess with intent to distribute 100 kilograms or more of marijuana. To assist you in determining whether there was an agreement to commit an offense identified as an objective of the conspiracy, you should consider the elements of that offense. The elements of a ***"manufacturing"*** offense are the following: (1) on or about the date alleged, a person manufactured marijuana; and (2) the person knew that he or she was, or intended to be, manufacturing a controlled substance. The elements of a ***"distribution"*** offense are the following: (1) on or about the date alleged, a person intentionally distributed a controlled substance to another; and (2) at the time of the distribution, the person knew that what he or she was distributing was a controlled substance. The elements of a ***"possession with intent to distribute"*** offense are the following: (1) on or about the date alleged, a person possessed a controlled substance; (2) the person knew that

he or she was, or intended to be, in possession of a controlled substance; and (3) the person intended to distribute some or all of the controlled substance to another person.

Keep in mind, however, that to prove the "conspiracy" offense, the prosecution must prove that there was an *agreement* to commit one or more of the objectives alleged. The prosecution is not required to prove an agreement to commit *all* of the objectives alleged. Also, the prosecution is *not* required to prove that any such objective *was actually committed*. In other words, the question is whether the defendant *agreed* to manufacture marijuana, or to distribute marijuana, or to possess with intent to distribute marijuana, or one or more of those offenses, not whether the defendant or someone else *actually committed* any such offense.

If there was no agreement, there was no conspiracy. Similarly, if you find that there was an agreement, but you find that the defendant did not join in that agreement, or did not know the purpose of the agreement, then you cannot find the defendant guilty of the "conspiracy" charge.

***Two*, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect.**

You should understand that evidence that a person was merely present at the scene of an event, or merely acted in the same way as others, or merely associated with others does not prove that the person joined in an agreement or understanding. A person who had no knowledge of a conspiracy, but who happened to act in a way that advanced some purpose of one, did not thereby

become a member. Similarly, the defendant's mere knowledge of the existence of a conspiracy, or mere knowledge that an objective of the conspiracy was being contemplated or attempted, is not enough to prove that the defendant joined in the conspiracy; rather, the prosecution must establish that there was some degree of knowing involvement and cooperation by the defendant.

On the other hand, a person may have joined in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members were. Further, it is not necessary that a person agreed to play any particular part in carrying out the agreement or understanding. A person may have become a member of a conspiracy even if that person agreed to play only a minor part in the conspiracy, as long as that person had an understanding of the unlawful nature of the plan and voluntarily and intentionally joined in it.

In deciding whether the defendant voluntarily and intentionally joined in the agreement, you must consider only evidence of his own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that the defendant said or did.

***Three*, at the time that the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.**

The defendant must have known of the existence and purpose of the conspiracy. Without such knowledge, he cannot be guilty of conspiracy, even if his acts furthered the conspiracy. You may not find that the defendant knew the purpose of the agreement or understanding if you find that he was simply careless. A showing of negligence, mistake, or carelessness is not

sufficient to support a finding that the defendant knew the purpose of the agreement or understanding.

If the prosecution fails to prove these elements beyond a reasonable doubt as to the defendant, then you must find the defendant not guilty of the "marijuana conspiracy" offense charged in **Count 2** of the Indictment.

In addition, if you find a defendant guilty of this "marijuana conspiracy" offense, then you must also determine beyond a reasonable doubt the quantity of any marijuana actually involved in the conspiracy for which that defendant can be held responsible, as explained in Instruction No. 5.

INSTRUCTION NO. 5 - QUANTITY OF MARIJUANA

If you find the defendant guilty of the "manufacturing marijuana" offense charged in **Count 1** or the "marijuana conspiracy" offense charged in **Count 2**, then you must also determine beyond a reasonable doubt the quantity of any marijuana actually involved in such an offense for which that defendant can be held responsible.

Although the Indictment charges that the offenses charged in **Counts 1 and 2** involved a particular quantity of marijuana, the prosecution does not have to prove that either offense involved the amount or quantity of marijuana alleged in the Indictment. However, *if* you find the defendant guilty of an offense charged in **Count 1** or **Count 2**, *then* you must determine the following matters *beyond a reasonable doubt*: (1) whether that offense actually involved marijuana, as charged in the Indictment; and (2) the *total quantity range*, in kilograms or number of plants, of the marijuana involved in that offense for which the defendant can be held responsible. You may find more or less than the charged quantity of marijuana, but you must find that the quantity range you indicate in the Verdict Form for that controlled substance has been proved beyond a reasonable doubt as the quantity range for which the defendant can be held responsible on the offense in question. In making the required determinations, you may consider all of the evidence in the case that may aid in the determination of these issues.

Responsibility

A defendant guilty of ***manufacturing marijuana***, as charged in **Count 1**, is responsible for the quantities of that controlled substance that he actually manufactured or attempted to manufacture. Controlled substances manufactured for personal use should be included when determining the drug quantity for a "marijuana manufacturing" offense.

A defendant guilty of a ***marijuana conspiracy***, as charged in **Count 2** of the Indictment, is responsible for the quantities of any marijuana that he actually manufactured, distributed, or possessed with intent to distribute or any quantities that he agreed to manufacture, to distribute, or to possess with intent to distribute. Such a defendant is also responsible for those quantities of marijuana that fellow conspirators manufactured, distributed, or possessed with intent to distribute or agreed to manufacture, to distribute, or to possess with intent to distribute, if you find that the defendant could have reasonably foreseen, at the time that he joined the conspiracy or while the conspiracy lasted, that those prohibited acts were a necessary or natural consequence of the conspiracy. Controlled substances manufactured or acquired for personal use should be included when determining the drug quantity for the "marijuana conspiracy" offense.

Determination of quantity and verdict

You must determine beyond a reasonable doubt the *total quantity range*, in *kilograms or plants*, of the marijuana involved in the offense for which you find the defendant can be held responsible. You must then indicate that *total quantity range* in the Verdict Form. Thus, if you find the defendant guilty of the "marijuana

manufacturing" offense charged in **Count 1**, then you must determine beyond a reasonable doubt whether the defendant can be held responsible for 100 or more marijuana plants, 50 or more but less than 100 marijuana plants, or less than 50 marijuana plants. Similarly, if you find the defendant guilty of the "marijuana conspiracy" charge in **Count 2** of the Indictment, then you must determine beyond a reasonable doubt whether the defendant can be held responsible for a conspiracy involving 100 kilograms or more of marijuana, 100 or more of marijuana plants, 50 kilograms or more but less than 100 kilograms of marijuana, 50 or more but less than 100 marijuana plants, less than 50 kilograms of marijuana, or less than 50 marijuana plants.

In making your determination of quantity as required, it may be helpful to remember that one pound is approximately equal to 453.6 grams and, conversely, that one kilogram is approximately equal to 2.2 pounds.

INSTRUCTION NO. 6 - COUNTS 3, 4, AND 5: POSSESSION WITH INTENT TO DISTRIBUTE OFFENSES

Counts 3, 4, and 5 of the Indictment charge offenses that I will call the "possession with intent to distribute" offenses. These offenses allegedly involved different controlled substances, but all were allegedly committed on or about August 2, 2006. Thus, **Count 3** charges that defendant Donisi knowingly and intentionally possessed with intent to distribute mixtures or substances containing a detectable amount of nandrolone and stanozolol. **Count 4** charges that defendant Donisi knowingly and intentionally possessed with intent to distribute a mixture or substance containing a detectable amount of oxycodone. **Count 5** charges that defendant Donisi knowingly and intentionally possessed with intent to distribute a mixture or substance containing a detectable amount of marijuana.

The charged offenses

For you to find the defendant guilty of a particular "possession with intent to distribute" offense, the prosecution must prove beyond a reasonable doubt *all* of the following essential elements as to that offense:

***One*, on or about August 2, 2006, the defendant possessed the controlled substance in question.**

> "Possession" was defined for you in Instruction No. 2. You must determine whether or not the substance in the defendant's possession was, in fact, the controlled substance identified in the Count in question. For **Count 3**, the prosecution does not have to prove that the

> defendant possessed a mixture or substance contained both nandrolone and stanozolol. It is sufficient for that count if the prosecution proves that the defendant possessed a mixture or substance that contained either one or both of those anabolic steroids.

***Two*, the defendant knew that he was, or intended to be, in possession of a controlled substance.**

> "Knowledge" and "intent" were defined for you in Instruction No. 2. Additionally, the defendant need not have known what the controlled substance was, if the defendant knew that he had possession of some controlled substance.

***Three*, the defendant intended to distribute some or all of the controlled substance to another person.**

> Again, "intent" and "distribution" were defined for you in Instruction No. 2. In addition, you may, but are not required to, infer an "intent to distribute" from the following evidence: drug purity, suggesting that the drugs were intended to be "cut" or diluted before distribution, if the evidence shows that the defendant was aware of such purity; the presence of firearms, cash, packaging material, or other distribution paraphernalia; and possession of a large quantity of a controlled substance in excess of what an individual user would consume.

If the prosecution fails to prove these elements beyond a reasonable doubt as to a particular Count, then you must find the defendant not guilty of that "possession with intent to distribute" offense.

Lesser-included offenses

If your verdict on any "possession with intent to distribute" offense is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on such an offense, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the "lesser-included offense" of "possession of a controlled substance."

For you to find the defendant guilty of a lesser-included offense of "possession of a controlled substance," the prosecution must prove beyond a reasonable doubt *both* of the following essential elements:

***One*, on or about August 2, 2006, the defendant possessed the controlled substance in question.**

> "Possession" was defined for you in Instruction No. 2. You must determine whether or not the substance in the defendant's possession was, in fact, the controlled substance identified in the Count in question. For **Count 3**, the prosecution does not have to prove that the defendant possessed a mixture or substance contained both nandrolone and stanozolol. It is sufficient for that count if the prosecution proves that the defendant possessed a mixture or substance that contained either one or both of those anabolic steroids.

***Two*, the defendant knew that he was in possession of a controlled substance.**

> "Knowledge" was defined for you in Instruction No. 2. Additionally, the defendant need not have known what the controlled substance was, if the defendant knew that he had possession of some controlled substance.

If the prosecution fails to prove these elements beyond a reasonable doubt as to a particular Count, then you must find the defendant not guilty of the "lesser-included offense" of "possession of a controlled substance" for that Count.

Determination of quantity not required

Although you must determine whether or not any substance in the defendant's possession contained a detectable amount of the controlled substance in question in the Count in question in order to find the defendant guilty of the charged offense or the lesser-included offense for that Count, you do not have to determine the quantity of any controlled substance involved in such an offense, even if you find the defendant guilty of a "possession with intent to distribute" offense in **Count 2, 3, or 4** or a "lesser-included offense" for such an offense.

INSTRUCTION NO. 7 - COUNT 6:
DRUG USER IN POSSESSION OF A FIREARM

Count 6 of the Indictment charges that, on or about August 2, 2006, defendant Mark Donisi, who was then an unlawful user of controlled substances, specifically, marijuana, anabolic steroids, and/or oxycodone, did knowingly possess one or more firearms, in and affecting commerce. The defendant denies that he committed this "drug user in possession of a firearm" offense.

For you to find the defendant guilty of this offense, the prosecution must prove *all* of the following essential elements beyond a reasonable doubt:

***One*, on or about August 2, 2006, the defendant knowingly possessed one or more firearms.**

> This offense allegedly involved the defendant's possession of the following firearms:
>
> (a) a Marlin Model 60 .22 caliber rifle, serial number 15515636;
>
> (b) an Ithaca M-49 .22 caliber rifle, serial number 282180; and/or
>
> (c) a Stevens Model 94 20-gauge shotgun, serial number unknown.
>
> The defendant must have "knowingly possessed" at least one of these firearms. "Knowledge" and "possession" were both defined for you in Instruction No. 2.
>
> It is an offense for an unlawful user of a controlled substance knowingly to possess a single firearm. Therefore, the prosecution does not have to prove that the defendant was in possession of more than one firearm. However, you must unanimously agree that the defendant

possessed one or more firearms and which firearm or firearms they were.

***Two*, during the time that the defendant possessed the firearm or firearms, he was an unlawful user of a controlled substance.**

An "unlawful user of a controlled substance" is a person who uses a controlled substance in a manner other than as prescribed by a licensed physician. The prosecution does not have to prove that the defendant was an unlawful user of all of the controlled substances identified in the charge, only that he was an unlawful user of one or more of those controlled substances. The prosecution also does not need to prove that the defendant was actually using or addicted to drugs at the exact moment he possessed the firearm in order to prove that he was an "unlawful user" in possession of that firearm. The prosecution must only prove that the defendant was an "unlawful user" or addicted to a controlled substance during the time that he possessed the firearm in question. Also, it is not enough if the defendant's use of a controlled substance was infrequent, only an isolated incident, or in the distant past. Instead, the defendant's unlawful use of a controlled substance must have been consistent and prolonged, as well as contemporaneous with the possession of the firearm in question. That means that the defendant's unlawful use must have occurred recently enough, as compared to the date of possession of the firearm or firearms, to indicate that he was actively engaged in such conduct at the time that he possessed the firearm or firearms in question.

***Three*, at some time during or before the defendant's possession of the firearm or firearms, each such firearm was transported across a state line.**

> The prosecution and the defendant have stipulated, that is, they have agreed, that the firearms in question were transported across a state line at some time before the defendant received or possessed those items, if the defendant did, indeed, possess them. Therefore, you must consider this element to be proved.

If the prosecution fails to prove *all* of the essential elements of this offense against the defendant, then you must find the defendant not guilty of the "drug user in possession of a firearm" offense charged in **Count 6** of the Indictment.

INSTRUCTION NO. 8 - COUNT 7:
THE MONEY-LAUNDERING CONSPIRACY

Count 7 of the Indictment charges that, between about 2001 and August 2, 2006, defendant Mark Donisi knowingly and unlawfully conspired with other persons, whose names are known and unknown to the Grand Jury, to commit the following offenses or "objectives": (1) to conduct and attempt to conduct financial transactions, knowing that the property involved in such financial transactions represented the proceeds of some form of unlawful activity, with intent to promote the carrying on of that unlawful activity (the "promotion" objective); (2) to conduct financial transactions, knowing that the property involved represented the proceeds of some form of unlawful activity, and knowing that the transaction was designed, in whole or in part, to conceal and disguise the nature, location, source, ownership, and control of the proceeds of the unlawful activity (the "concealment" objective). The defendant denies that he committed this "money-laundering conspiracy" offense.

For you to find the defendant guilty of this "money-laundering conspiracy" offense, the prosecution must prove beyond a reasonable doubt *all* of the following essential elements:

***One*, between about 2001 and August 2, 2006, two or more persons reached an agreement or came to an understanding to commit one or more of the money-laundering offenses alleged to be the objectives of the conspiracy.**

In Instruction No. 4, concerning the "marijuana conspiracy," in the explanation to element *one*, beginning

on page 11, I explained the requirements to prove an illegal agreement for a conspiracy charge. That explanation applies here, as well.

This "money-laundering conspiracy" charge, however, involves different alleged objectives, which I have described as the "promotion" objective and the "concealment" objective. To help you determine whether there was an agreement to commit either of these "objectives," I have set out the elements of these "objectives" and definitions of various terms pertinent to "money-laundering" charges in Instruction No. 9, beginning on page 29.

***Two*, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect.**

In Instruction No. 4, in the explanation to element *two*, beginning on page 13, I explained the requirements to prove that the defendant joined in an illegal agreement or understanding. That explanation applies here, as well.

***Three*, at the time that the defendant joined in the agreement or understanding, he knew the essential purpose of the agreement or understanding.**

The defendant must have known of the existence and purpose of the conspiracy. Without such knowledge, he cannot be guilty of conspiracy, even if his acts furthered the conspiracy. You may not find that the defendant knew the purpose of the agreement or understanding if you find that he was simply careless. A showing of negligence, mistake, or carelessness is not

sufficient to support a finding that the defendant knew the purpose of the agreement or understanding.

If the prosecution fails to prove these elements beyond a reasonable doubt as to the defendant, then you must find the defendant not guilty of the "money-laundering conspiracy" offense charged in **Count 7** of the Indictment.

INSTRUCTION NO. 9 - COUNT 7:
MONEY-LAUNDERING "OBJECTIVES" AND TERMINOLOGY

The "money-laundering conspiracy" charge alleges that the conspirators agreed to commit either or both of the following money-laundering offenses, or "objectives": (1) to conduct and attempt to conduct financial transactions, knowing that the property involved in such financial transactions represented the proceeds of some form of unlawful activity, with intent to promote the carrying on of that unlawful activity (the "promotion" objective); (2) to conduct financial transactions, knowing that the property involved represented the proceeds of some form of unlawful activity, and knowing that the transaction was designed, in whole or in part, to conceal and disguise the nature, location, source, ownership, and control of the proceeds of the unlawful activity (the "concealment" objective). To assist you in determining whether there was an agreement to commit these "money-laundering" offenses, you should consider the elements of these "objectives."

The "promotion" objective

To prove that a person committed the money-laundering offense of conducting transactions to promote unlawful activity, the prosecution would have to prove beyond a reasonable doubt the following elements:

One, on or about the date alleged, the person conducted or attempted to conduct a financial transaction, which in any way or degree affected interstate or foreign commerce;

Two, the person conducted or attempted to conduct the financial transaction with United States currency that involved the proceeds of the illegal distribution of controlled substances or a conspiracy to distribute controlled substances;

Three, at the time the person conducted or attempted to conduct the financial transaction, the person knew that the United States currency represented the proceeds of some form of unlawful activity; and

Four, the person conducted or attempted to conduct the financial transaction with the intent to promote the carrying on of the illegal distribution of controlled substances or a conspiracy to distribute controlled substances.

The "concealment" objective

To prove that a person committed the money-laundering offense of concealment of proceeds, the prosecution would have to prove beyond a reasonable doubt the following elements:

One, on or about the date alleged, the person conducted or attempted to conduct a financial transaction, which in any way or degree affected interstate commerce;

Two, the person conducted or attempted to conduct the financial transaction with United States currency that involved the proceeds of the illegal distribution of controlled substances or a conspiracy to distribute controlled substances;

Three, at the time the person conducted or attempted to conduct the financial transaction, the person knew that the United States currency represented the proceeds of some form of unlawful activity; and

Four, the person conducted or attempted to conduct the financial transaction knowing that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of the illegal distribution of controlled substances or a conspiracy to distribute controlled substances.

Attempting to conduct transactions

A person "attempted to conduct" a financial transaction, if the person intended to conduct a financial transaction and voluntarily and intentionally carried out some act that was a substantial step toward completion of the transaction. A "substantial step" must be more than mere preparation, yet may be less than the last step necessary before the actual completion of the transaction. It must, however, be necessary to the consummation or completion of the transaction and be of such a nature that a reasonable observer, viewing it in context, could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to conduct a financial transaction.

Money-laundering terminology

I will now give you definitions of some of the terms used in this instruction:

"Financial transaction" means a transaction which in any way or degree affects interstate commerce involving the movement of funds by wire or other means.

"Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition of property.

"Interstate commerce" means commerce between any combination of states of the United States. "Commerce," in turn, includes, among other things, travel, trade, transportation, and communication. It is not necessary for the prosecution to show that the defendant actually intended or anticipated an effect on interstate commerce. All that is necessary is that interstate commerce was affected as a natural and probably consequence of the defendant's actions. You may find an effect on interstate commerce if you find beyond a reasonable doubt from the evidence that currency used in the transaction was printed in Washington, D.C.

"Funds" means, among other things, United States currency.

"Proceeds" means any property, or any interest in property, that someone acquires as a result of the commission of the sale of illegal controlled substances. The prosecution is not required to trace the property that it alleges to be proceeds of the unlawful sale of controlled substances to a particular underlying offense. It is sufficient if the prosecution proves beyond a reasonable doubt that the property was the proceeds of the unlawful sale of controlled substances generally. For example, in a case involving alleged drug proceeds, such as this case, the prosecution would not have to trace the money to a particular drug offense, but could satisfy this requirement by proving that the money was the proceeds of drug trafficking generally. The prosecution also need not prove that all of the property involved in the transaction was the proceeds of the unlawful sale of drugs. Rather,

it is sufficient if the prosecution proves that at least part of the property represented such proceeds.

"Knew the United States currency represented the proceeds of some form of unlawful activity" means that the defendant knew that the property involved in the transaction represented the proceeds from some form, though not necessarily which form, of activity that constitutes a felony offense under federal or state law. Thus, the prosecution need not prove that the defendant specifically knew that the United States currency involved in the financial transactions represented the proceeds of distributing controlled substances or any other specific offense; rather, the prosecution need only prove that the defendant knew that the currency represented the proceeds of some form, though not necessarily which form, of felony under federal or state law. As a matter of law, distributing controlled substances is a felony under federal law.

INSTRUCTION NO. 10 - PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

The defendant is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the defendant's arrest or charge or the fact that he is here in court. The presumption of innocence remains with the defendant throughout the trial. That presumption alone is sufficient to find the defendant not guilty. The presumption of innocence may be overcome as to the defendant only if the prosecution proves, beyond a reasonable doubt, *all* of the elements of the charged offense against him.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to any defendant to prove his innocence. Therefore, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution. Similarly, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.

Unless the prosecution proves beyond a reasonable doubt that the defendant has committed each and every element of an offense charged against him, you must find him not guilty of that offense.

INSTRUCTION NO. 11 - REASONABLE DOUBT

I have previously instructed you that, for you to find the defendant guilty of a charged offense, the prosecution must prove the elements of that offense "beyond a reasonable doubt" against the defendant. A reasonable doubt may arise from the evidence produced by either the prosecution or the defendant, keeping in mind that the defendant never has the burden or duty of calling any witnesses or producing any evidence. A reasonable doubt may also arise from the prosecution's lack of evidence. A reasonable doubt is a doubt based upon reason and common sense. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the more serious and important transactions of life. On the other hand, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 12 - DEFINITION OF EVIDENCE

Your verdict must be based only on the evidence presented in this case and these and any other instructions that may be given to you during the trial. Evidence is:

1. Testimony.
2. Exhibits that are admitted into evidence.
3. Stipulations, which are agreements between the parties.

Evidence may be "direct" or "circumstantial." The law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide.

A particular item of evidence is sometimes admitted only for a limited purpose, and not for any other purpose. Judge Bennett will tell you if that happens, and instruct you on the purposes for which the item can and cannot be used.

The fact that an exhibit may be shown to you does not mean that you must rely on it more than you rely on other evidence.

The following are not evidence:

1. Statements, arguments, questions, and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony that Judge Bennett tells you to disregard.
4. Anything that you see or hear about this case outside the courtroom.

The weight of the evidence is not determined merely by the number of witnesses testifying as to the existence or non-existence of any fact. Also, the

weight of the evidence is not determined merely by the number or volume of documents or exhibits. The weight of the evidence depends upon its quality, which means how convincing it is, and not merely upon its quantity. For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict the witness's testimony. The quality and weight of the evidence are for you to decide.

INSTRUCTION NO. 13 - CREDIBILITY AND IMPEACHMENT

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, only part of it, or none of it.

In deciding what testimony to believe, for each witness, consider the witness's intelligence, the opportunity the witness had to see or hear the things the witness testifies about, the witness's memory, any motives the witness may have for testifying a certain way, the manner of the witness while testifying, whether the witness said something different at an earlier time, the witness's drug or alcohol use or addiction, if any, the general reasonableness of the witness's testimony, and the extent to which the witness's testimony is consistent with any evidence that you believe. In deciding whether or not to believe a witness, keep in mind that people sometimes see or hear things differently and sometimes forget things. You need to consider, therefore, whether a contradiction results from an innocent misrecollection or sincere lapse of memory, or instead from an intentional falsehood or pretended lapse of memory.

If the defendant testifies, you should judge his testimony in the same manner in which you judge the testimony of any other witness.

Ordinarily, witnesses may only testify to factual matters within their personal knowledge. However, you may hear evidence from persons described as experts. Persons may become qualified as experts in some field by knowledge, skill, training, education, or experience. Such experts may state their opinions on matters

in that field and may also state the reasons for their opinions. You should consider expert testimony just like any other testimony. You may believe all of what an expert says, only part of it, or none of it, considering the expert's qualifications, the soundness of the reasons given for the opinion, the acceptability of the methods used, any reason that the expert may be biased, and all of the other evidence in the case.

Just because a witness works in law enforcement or is employed by the government does not mean you should give more weight or credence to such a witness's testimony than you give to any other witness's testimony.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness said or did something, or has failed to say or do something, that is inconsistent with the witness's present testimony. If earlier statements of a witness are admitted into evidence, they will not be admitted to prove that the contents of those statements are true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness and, therefore, whether they affect the credibility of that witness.

You may hear evidence that one or more witnesses have each been convicted of a crime. You may use that evidence only to help you decide whether or not to believe those witnesses and how much weight to give their testimony.

You should treat the testimony of certain witnesses with greater caution and care than that of other witnesses:

1. You may hear evidence that one or more witnesses are testifying pursuant to plea agreements and hope to receive reductions in their sentences in return for their cooperation with the prosecution in this case. If the prosecutor handling such a witness's case believes the witness has provided "substantial assistance," the prosecutor can file a motion to reduce the witness's sentence. The judge has no power to reduce a sentence for such a witness for substantial assistance unless the prosecutor files a motion requesting such a reduction. If the prosecutor files a motion for reduction of sentence for substantial assistance, then it is up to the judge to decide whether to reduce the sentence of that witness at all, and if so, how much to reduce it. You may give the testimony of such witnesses such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by the witness's hope of receiving a reduction in sentence is for you to decide.

2. You may also hear testimony from one or more witnesses that they participated in one or more of the crimes charged against the defendant. Their testimony will be received in evidence and you may consider it. You may give the testimony of such a witness such weight as you think it deserves. Whether or not the testimony of such a witness may be influenced by his or her desire to please the prosecutor or to strike a good bargain with the prosecutor about his or her own situation is for you to determine.

3. You may also hear evidence that one or more witnesses have pled guilty to a state drug offense and/or are testifying pursuant to a "proffer

agreement," which means that the witnesses have received a promise from the Government that the witnesses' testimony will not be used against them in a criminal case. The testimony of such witnesses will be received in evidence and you may consider it. You may give the testimony of such a witness such weight as you think it deserves. Whether or not the testimony of such a witness may have been influenced by the immunity promise is for you to determine.

* * *

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness's testimony whatever weight you think it deserves.

INSTRUCTION NO. 14 - BENCH CONFERENCES AND RECESSES

During the trial it may be necessary for Judge Bennett to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please be patient, because while you are waiting, Judge Bennett and the attorneys will be working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, to avoid confusion and error, and to save your valuable time. Judge Bennett and the attorneys will, of course, do what they can to keep the number and length of these conferences to a minimum.

INSTRUCTION NO. 15 - OBJECTIONS

The lawyers may make objections and motions during the trial that Judge Bennett must rule upon. If he sustains an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself. Also, the lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible. Do not hold it against a lawyer or the party the lawyer represents because the lawyer has made objections.

INSTRUCTION NO. 16 - NOTE-TAKING

If you want to take notes during the trial, you may, but be sure that your note-taking does not interfere with listening to and considering all the evidence. If you choose not to take notes, remember it is your own individual responsibility to listen carefully to the evidence.

Notes you take during the trial are not necessarily more reliable than your memory or another juror's memory. Therefore, you should not be overly influenced by the notes.

If you take notes, do not discuss them with anyone before you begin your deliberations. At the end of each day, please leave your notes on your chair. At the end of the trial, you may take your notes out of the notebook and keep them, or leave them, and we will destroy them. No one will read the notes, either during or after the trial.

You will notice that we have an official court reporter making a record of the trial. However, we will not have typewritten transcripts of this record available for your use in reaching your verdict.

INSTRUCTION NO. 17 - CONDUCT OF THE JURY DURING TRIAL

You must decide this case based ***solely*** on the evidence presented in court, in light of your own observations, experiences, reason, common sense, and the law as I have explained it in these Instructions. Therefore, to insure fairness, you, as jurors, must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case or about anyone involved with it until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it, or about any news story, rumor, or gossip about this case, or ask you about your participation in this case until the trial has ended and your verdict has been accepted by me. If someone should try to talk to you about the case during the trial, please report it to Judge Bennett.

Fourth, during the trial, you should not talk with or speak to any of the parties, lawyers, or witnesses involved in this case—you should not even pass the time of day with any of them. It is important that you not only do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side—even if it is simply

to pass the time of day—an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it, or let anyone tell you anything about any such news reports. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case you will know more about the matter than anyone will learn through the news media.

Sixth, do not do any research—on the Internet, in libraries, in the newspapers, or in any other way—or make any investigation *about this case* on your own.

Seventh, do not make up your mind during the trial about what the verdict should be. Do not discuss this case with anyone, not even with other jurors, until I send you to the jury room for deliberations after closing arguments. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

Eighth, if at anytime during the trial you have a problem that you would like to bring to Judge Bennett's attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer, who will deliver it to Judge Bennett. We want you to be comfortable, so please do not hesitate to inform the Court Security Officer of any problem.

INSTRUCTION NO. 18 - DUTY TO DELIBERATE

A verdict must represent the considered judgment of each juror. *You must give separate consideration to each charge against the defendant, and your verdict on each charge against the defendant must be unanimous*. It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced that it is wrong. To bring twelve minds to an unanimous result, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish the defendant's guilt beyond a reasonable doubt on the offense charged against him, then he should have your vote for a not guilty verdict on that offense. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for the defendant on that offense. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes the defendant's guilt beyond a reasonable doubt on the charged offense, then your vote should be for a verdict of

guilty against the defendant on that charge, and if all of you reach that conclusion, then the verdict of the jury must be guilty for the defendant on that offense. As Judge Zoss instructed you earlier, the burden is upon the prosecution to prove beyond a reasonable doubt every essential element of an offense charged against the defendant, and if the prosecution fails to do so as to the defendant, then you cannot find him guilty of that offense.

Remember, also, that the question before you can never be whether the prosecution wins or loses the case. The prosecution, as well as society, always wins, regardless of whether your verdict is not guilty or guilty, when justice is done.

Finally, remember that you are not partisans; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial, or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, the case is left open and must be disposed of at some later time.

INSTRUCTION NO. 19 - DUTY DURING DELIBERATIONS

There are certain rules you must follow while conducting your deliberations and returning your verdict:

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, if the defendant is guilty of a charged offense, then the sentence to be imposed is my responsibility. You may not consider punishment of the defendant in any way in deciding whether the prosecution has proved its case against him beyond a reasonable doubt.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. *Remember that you should not tell anyone—including me—how your votes stand numerically*.

Fourth, your verdict must be based solely on the evidence and on the law in these instructions. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Fifth, in your consideration of whether the defendant is not guilty or guilty of an offense charged against him, you must not consider his race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant on any charge unless you would return the same verdict on that charge

without regard to the defendant's race, color, religious beliefs, national origin, or sex. To emphasize the importance of this consideration, the verdict form contains a certification statement. Each of you should carefully read the statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects the manner in which each of you reached your decision.

Finally, I am giving you the verdict form. A verdict form is simply the written notice of the decision that you reach in this case. You will take the verdict form to the jury room. You must return a unanimous verdict on each charge against the defendant. When you have reached a unanimous verdict, your foreperson must complete one copy of the verdict form and all of you must sign that copy to record your individual agreement with the verdict and to show that it is unanimous. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict. When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

DATED this 28th day of September, 2007.

Mark W. Bennett

MARK W. BENNETT
U. S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. MARK DONISI, Defendant.	No. CR 06-3055-MWB **VERDICT FORM**

_____

As to defendant Mark Donisi, we, the Jury, unanimously find as follows:

<table>
<tr><th colspan="2">COUNT 1: MANUFACTURING MARIJUANA</th><th>VERDICT</th></tr>
<tr><td>Step 1:
Verdict</td><td>On the “manufacturing marijuana” offense charged in Count 1, as explained in Instruction No. 3, please mark your verdict. (If you found the defendant “not guilty,” do not consider the question in Step 2. Instead, go on to consider your verdict on Count 2. However, if you found the defendant “guilty” of Count 1, please answer the question in Step 2 of this section of the Verdict Form.)</td><td>____ Not Guilty

____ Guilty</td></tr>
<tr><td>Step 2:
Alternative and Quantity of marijuana</td><td colspan="2">If you found the defendant “guilty” of the “manufacturing marijuana” charge in Count 1, please indicate whether you find the defendant guilty of actually committing the offense of manufacturing marijuana, attempting to commit the offense of manufacturing marijuana, or both. Then indicate the quantity of marijuana involved in an alternative for which you find the defendant guilty for which the defendant can be held responsible. (Quantity of marijuana is explained in Instruction No. 5.)</td></tr>
<tr><td></td><td>_____ Actually manufacturing marijuana</td><td>_____ 100 or more marijuana plants
_____ 50 or more, but less than 100 marijuana plants
_____ less than 50 marijuana plants</td></tr>
<tr><td></td><td>_____ Attempting to manufacture marijuana</td><td>_____ 100 or more marijuana plants
_____ 50 or more, but less than 100 marijuana plants
_____ less than 50 marijuana plants</td></tr>
</table>

<table>
<tr><th colspan="3">COUNT 2: MARIJUANA CONSPIRACY</th><th>VERDICT</th></tr>
<tr><td>Step 1:
Verdict</td><td colspan="2">On the “marijuana conspiracy” offense charged in Count 1, as explained in Instruction No. 4, please mark your verdict. (If you found the defendant “not guilty,” do not consider the question in Step 2. Instead, go on to consider your verdict on Count 3. However, if you found the defendant “guilty” of Count 2, please answer the question in Step 2 of this section of the Verdict Form.)</td><td>____ Not Guilty

____ Guilty</td></tr>
<tr><td>Step 2:
“Objectives” and quantity of marijuana</td><td colspan="3">If you found the defendant “guilty” of the “marijuana conspiracy” charge in Count 2, please indicate the “objective” or “objectives” of the conspiracy and the quantities of marijuana involved for which the defendant can be held responsible. (Quantity of marijuana is explained in Instruction No. 5.)</td></tr>
<tr><td rowspan="3"></td><td>_____ manufacturing marijuana plants</td><td>_____ 100 or more marijuana plants
_____ 50 or more, but less than 100 marijuana plants
_____ less than 50 marijuana plants</td></tr>
<tr><td>_____ manufacturing marijuana</td><td>_____ 100 kilograms or more
_____ 50 kilograms or more, but less than 100 kilograms
_____ less than 50 kilograms</td></tr>
<tr><td>_____ distributing marijuana</td><td>_____ 100 kilograms or more
_____ 50 kilograms or more, but less than 100 kilograms
_____ less than 50 kilograms</td></tr>
<tr><td></td><td>_____ possessing with intent to distribute marijuana</td><td>_____ 100 kilograms or more
_____ 50 kilograms or more, but less than 100 kilograms
_____ less than 50 kilograms</td></tr>
</table>

COUNT 3: POSSESSING WITH INTENT TO DISTRIBUTE ANABOLIC STEROIDS		**VERDICT**
Step 1: Verdict	On the charge of possessing with intent to distribute nandrolone and stanozolol (anabolic steroids), as charged in **Count 3** and explained in Instruction No. 6, please mark your verdict. (*If you found the defendant "not guilty" or entered "no verdict," do not consider the question in **Step 2***. Instead, go on to consider your verdict on the "lesser-included offense" of "possession" in ***Step 3.*** *However, if you found the defendant "guilty" of **Count 3**, please answer the question in **Step 2** of this section of the Verdict Form.*)	____ Not Guilty ____ Guilty ____ No verdict
Step 2: Anabolic steroids	On the charge of possessing with intent to distribute nandrolone and stanozolol (anabolic steroids), as charged in **Count 3** and explained in Instruction No. 1, please mark your verdict.	
	_____ Nandrolone	
	_____ Stanozolol	
Step 3: Lesser-included offense	*If you entered "not guilty" or "no verdict" for this offense in **Step 1**,* what is your verdict on the "lesser-included offense" of "possession of anabolic steroids"? (*The requirements for proof of this "lesser-included offense" were explained in Instruction No. 6, beginning on page 21.*)	____ Not Guilty ____ Guilty
COUNT 4: POSSESSING WITH INTENT TO DISTRIBUTE OXYCODONE		**VERDICT**
Step 1: Verdict	On the charge of possessing with intent to distribute oxycodone, as charged in **Count 4** and explained in Instruction No. 6, please mark your verdict. (*If you found the defendant "guilty" of **Count 4**, do not consider the question in **Step 2**. However, if you found the defendant "not guilty" or entered "no verdict" for **Count 4**, please go on to consider your verdict on the "lesser-included offense" of "possession of oxycodone" in **Step 2.***)	____ Not Guilty ____ Guilty ____ No verdict
Step 2: Lesser-included offense	*If you entered "not guilty" or "no verdict" for this offense in **Step 1**,* what is your verdict on the "lesser-included offense" of "possession of oxycodone"? (*The requirements for proof of this "lesser-included offense" were explained in Instruction No. 6, beginning on page 21.*)	____ Not Guilty ____ Guilty

COUNT 5: POSSESSING WITH INTENT TO DISTRIBUTE MARIJUANA		**VERDICT**
Step 1: Verdict	On the charge of possessing with intent to distribute marijuana, as charged in **Count 5** and explained in Instruction No. 6, please mark your verdict. (*If you found the defendant "guilty" of **Count 5**, do not consider the question in **Step 2**. However, if you found the defendant "not guilty" or entered "no verdict" for **Count 5**, please go on to consider your verdict on the "lesser-included offense" of "possession of marijuana" in **Step 2**.*)	____ Not Guilty ____ Guilty ____ No verdict
Step 2: Lesser-included offense	*If you entered "not guilty" or "no verdict" for this offense in **Step 1**,* what is your verdict on the "lesser-included offense" of "possession of marijuana"? (*The requirements for proof of this "lesser-included offense" were explained in Instruction No. 6, beginning on page 21.*)	____ Not Guilty ____ Guilty
COUNT 6: DRUG USER IN POSSESSION OF A FIREARM		**VERDICT**
Step 1: Verdict	On the "drug user in possession of a firearm" offense, as charged in **Count 6** and explained in Instruction No. 7, please mark your verdict. (*If you found the defendant "not guilty," do not consider the question in **Step 2**. Instead, go on to consider your verdict on **Count 7**. However, if you found the defendant "guilty" of this "drug user in possession of a firearm" offense, please answer the question in **Step 2** of this section of the Verdict Form.*)	___ Not Guilty ____ Guilty
Step 2: Firearms involved	*If you found the defendant "guilty" of this "drug user in possession of a firearm" offense,* please indicate which one or more of the following firearms you unanimously agree the defendant possessed during the time that he was an unlawful user of controlled substances.	
	_____ (a) a Marlin Model 60 .22 caliber rifle, serial number 15515636	
	_____ (b) an Ithaca M-49 .22 caliber rifle, serial number 282180	
	_____ (c) a Stevens Model 94 20-gauge shotgun, serial number unknown.	

COUNT 7: MONEY-LAUNDERING CONSPIRACY		VERDICT
Step 1: Verdict	On the "money-laundering conspiracy" offense charged in **Count 7**, as explained in Instruction No. 8, please mark your verdict. (*If you found the defendant "not guilty," do not consider the question in **Step 2**. Instead, notify the Court Security Officer that you have reached a verdict. However, if you found the defendant "guilty" of **Count 7**, please answer the question in **Step 2** of this section of the Verdict Form.*)	____ Not Guilty ____ Guilty
Step 2: "Objectives"	*If you found the defendant "guilty" of the "money-laundering conspiracy" charge in **Count 2**,* please indicate the "objective" or "objectives" of the conspiracy. (*"Objectives" of the "money-laundering conspiracy" are explained for you in Instruction No. 9.*)	
	_____ "Promotion" of unlawful activity	
	_____ "Concealment" of unlawful activity	
CERTIFICATION		
By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would have returned the same verdict for or against the defendant on the offenses charged regardless of the race, color, religious beliefs, national origin, or sex of the defendant.		

_____
Date

_____ _____
Foreperson Juror

_____ _____
Juror Juror

_____ _____
Juror Juror

_____	_____
Juror	Juror
_____	_____
Juror	Juror
_____	_____
Juror	Juror